

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.NO.189/BB/17

Under Section 252(3) of Companies Act, 2013

IN THE MATTER OF
ACOUSTICAL SURFACES PRIVATE LIMITED
Vs
REGISTRAR OF COMPANIES, KARNATAKA

Coram: 1. Hon'ble Shri. Ratakonda Murali, Member Judicial
2. Hon'ble Shri. Ashok Kumar Mishra, Member Technical

Order delivered on 30th January, 2018

For the Petitioner (s): Mr. Hari Babu Thota, Practising Company Secretary

Per: Hon'ble Shri. Ratakonda Murali, Member Judicial

Heard on. 15.11.2017, 29.11.2017, 7.12.2017, 21.12.2017, 12.01.2018

ACOUSTICAL SURFACES PRIVATE LIMITED

No.1157, 4th Floor, 20th Cross, 5th Main, 7th Sector,
HSR Layout, Bengaluru-560102

Vs

REGISTRAR OF COMPANIES, KARNATAKA

'E' Wing, 2nd Floor, Kendriya Sadana,
Kormangala, Bangalore-560034.

ORDER

The Petitioner Company M/s. Acoustical Surfaces Private Limited has filed the present petition under Section 252(3) of the Companies Act, 2013 with a prayer for issuance of directions to the Registrar of Companies, Karnataka to restore the name of the Company as originally existed in its register and continue its name on the register of Registrar of Companies.

The averments in the petition are as follows:

The Petitioner Company was originally incorporated on 12th April, 2013 under the name and style of "Acoustical Surfaces Private Limited" in the State of Karnataka vide CIN No.U36100KA2013PTC068531. The Registered Office of the Petitioner Company is situated at No.1157, 4th Floor, 20th Cross, 5th Main, 7th Sector, HSR Layout, Bangalore-560102.

The Authorised Capital of the Petitioner Company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital is Rs.1,00,000/- divided into 10,000 of Rs.10/- each.

The object of the Petitioner Company is to manufacture, sell, import, export, improve, prepare and deal whether as a whole seller or retailer or as a principal or as stockiest or as agent for all kinds of Acoustical products, sound proofing products, Sonex ceiling & Wall panel, Sound control curtains, Equipment Enclosures, Acoustical Baffles & Banners, Solid Wood & Veneer Acoustical Ceiling & Wall Systems, Professional Audio Acoustics, Vibration & Damping Control Fire Retardant Acoustics, Hearing Protection Moisture & Impact Resistance Products, Floor Impact Noise Reduction, Sound Absorbers, Noise Barriers, Fabric Wrapped Wall Panels, Acoustical Foam, Acoustical Sealants Adhesives, outdoor noise control, assistive listening devices, OSHA, FDA, ADA Compliance, on-site Acoustical Analysis and/or installation of such products at clients place in India. **The copy of Memorandum of Association and Articles of Association is shown in Annexure-A.**

The Petitioner Company states that its name has been struck off by the Registrar of companies, Karnataka in the month of July, 2017. The Petitioner Company further states that the Company is doing its business as a going concern basis and due to oversight and lack of professional advice, has not filed the Financial Statements and Annual Returns for preceding

three financial years 2013-14, 2014-15, 2015-16. The Petitioner Company further submits that it was in the process of filing of its Financial Statements and Annual Returns with ROC.

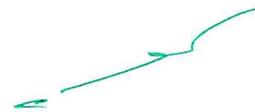
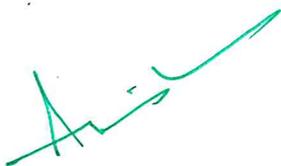
The Petitioner Company further averred that Company has received the notice from the Registrar of Companies, Karnataka in form STK-5 dated 26th February, 2017 to file the Financial Statements and Annual Return continuously for the immediate past three years.

The Petitioner Company submits that the Company was in processing of filings of its Balance sheet and Annual Return with ROC. The Petitioner Company further submits that in the meanwhile it came to know that due to non-filing of Financial Statements and Annual Returns for the last three financial years, the name of the Company has been struck off from Registrar of Companies. **The certified true copies of audited financial statements for the financial year 2013-14, 2014-15 and 2015-16 are shown as Annexure-B.**

The Petitioner Company had filed the Affidavit dated 20th November, 2017 of the Director of the Petitioner Company stating that the Company Undertakes to file the everdue returns such as Balance Sheets, Annual Returns and such other documents that are necessary, within 30 days from the date of restoration of name of the Company by the Registrar of Companies.

The Petitioner Company had filed another affidavit of the Director of the Company stating that no abnormal amount has been deposited into the Company's account during demonetisation period and no Income Tax notice has been served to the appellant company on this issue.

The Registrar of Companies has filed Counter affidavit dated 20th December, 2017 along with the Annexures. The Registrar of Companies herein denies all the averments made in the Petition save the averments which are specially admitted herein below and submitted his counter to the Petition as under:



- i.) The Petitioner Company is registered with the Registrar of Companies on 3/08/2011 with CIN No. U36100KA2013PTC068531 and as per the records of the Company in MCA 21 portal. The Registered Office address is No.1157, 4th Floor, 20th Cross, 5th Main, 7th Sector, HSR Layout, Bangalore-560102. The copy of the Company Master Data is shown as **Annexure I**.
- ii.) It is submitted that on verification of the MCA 21 Portal in the month of March 2017 when action under section 248(1) of the Companies Act, 2013(hereafter called as the 'Act') was initiated against the eligible Companies it was seen that the Petitioner Company has not filed either the Balance Sheet or the Annual Returns from the date of incorporation till 2015-2016. Therefore the Respondent had reasonable cause to believe that the Petitioner Company is not carrying on any business or operation and therefore a notice in Form STK-1 dated 17th March, 2017 was sent to the company. The copy of the said notice is shown as **Annexure II**.
- iii.) In the said notice STK-1 that was sent to the company and the directors of the company, it was mentioned that the petitioner company has defaulted in filing of the returns for two immediately preceding financial years and that the respondent proposes to strike off the name of the company from the Register of company as per Sec 248 of the Act unless a cause is shown to the contrary with 30 days from the date of receipt of the STK-1 notices.
- iv.) It is submitted that a consolidated notice in STK-5 in English and Hindi was released as per Rule 7 of the Companies (Removal of name of Companies from the Register of Companies) Rule, 2016, in the Official website of the Ministry of Corporate Affairs on 28.04.2017 and in the official Gazette on 20.05.2017 and the same was published in the newspaper in Kannada in Vijay Karnataka (Kannada Edition) and in English in the Times of India on 13.05.2017 and in all the above said notice i.e. STK-1, STK-5 and STK-5A, 30 days' time was given to show cause to the contrary to the action of strike off. Copies of the notice in website, Official Gazette and paper publication in



Vijay Karnataka and the Times of India are shown as **Annexure –III, IV respectively.**

- v.) It is submitted that since neither cause was shown to either the physical notices or to the website, Gazette and newspaper notices either by the Company or by its Directors, and also since no Balance Sheet or Annual Return was filed by the Petitioner company till 21.06.2017 the day on which the list of defaulting companies were crystallized, the Respondent proceeded to strike of the name of the Petitioner Company from the Register of Companies and published a notice in STK-7 in the homepage of the MCA on 12.10.2017. A copy of the said STK-7 Notice is shown as **Annexure –V.** It was also published in the official Gazette on 29.07.2017 stating that the from 17.07.2017 names of the companies mentioned therein including the petitioner company have been struck off from the Register of Companies as per sec 248(5) of the Act. A copy the publication made in the Official Gazette on 29.07.2017 is shown as **Annexure-VI.**
- vi.) The company has cited oversight and lack of professional advice as the reason for not filing the annual reports and balance sheets. The company has not filed the Balance Sheet and the Annual Report for the year 2013-14, 2014-15 and 2015-16. It may be seen that the ROC has sent the STK-1 notice to the company and its directors exactly the same address mentioned in the MCA 21 Portal. The petitioner though has not claimed anywhere in the petition that it is a functioning company, has however enclosed the copies of the Balance Sheet of the year 2013-14 to 2015-16 in Annexure-V of the Company Petition herein, as per which it is functioning company.
- vii.) There is no prosecution, inspection, technical scrutiny and complaint pending against this company.
- viii.) The Petitioner has claimed it is an active and functioning, and the petitioner has prayed that the name company be restored to the Register of Companies under section 252 of the Act. Subject to the satisfaction of this Hon'ble Tribunal and in the event of this Hon'ble Tribunal willing to revive the company, then the Respondent humbly prays that this Hon'ble Tribunal may kindly,

- a) Direct the petitioner to undertake to file the overdue returns upto date within 30 days in the MCA 21 Portal from the date of the order of NCLT reviving the company and comply with the provisions of Companies Act, 2013;
- b) Direct the Petitioner to pay costs as decided by this Hon'ble Tribunal to be paid to the account of Central Government by way of demand draft favouring the Pay and Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai, towards the expenses incurred by the Respondent in taking Section 248 action, like postage, stationary, advertisement charges etc.
- c) Direct that the revival order be automatically vacated if the above compliance are not made within a maximum period of 30 days from the date of the receipt of the order of the Petitioner.

The Registrar of Companies has exercised power under Section 248 of the Companies Act, 2013 read with (Removal of name of Companies from the Register of Companies) Rules, 2016 after following the procedure as per the law, giving opportunity to the Petitioner Company to file its Statutory Returns and upon non-filing of Statutory Returns the name of the Company was struck off.

On perusal of the affidavit of the Registrar of Companies, it appears that the name of the company was struck off, for failure on the part of the company to file the statutory documents since 2013, as mandatorily required under the Act.

The Petitioner Company has committed default in not filing the Statutory Returns for the Financial Years 2013-14, 2014-15 and 2015-2016 before the Respondent i.e. Registrar of Companies. The Petitioner Company in order to show that the company was carrying on business on the date of receipt of notice in Form STK-1 as well as on the date of struck off provided Audited Balance Sheet for the Period from 2013-14, 2014 -2015 till 2015-2016 along with this Petition to show its bonafide of carrying the Business. **The copies of the Audited Balance Sheet for the said period are shown as Annexure VII & VIII of the petition.**

Section 252(3) stipulates that "if a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the Register of Companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under subsection (5) of Section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies."

After hearing the Counsel for the Petitioner Company and perusal of the material on record the report of the Registrar of Companies, Karnataka and on going through the provisions of Section 252(3) of the Companies Act, 2013, this Tribunal is of the view that the company was in existence and it is a going concern and the name of the Company to be restored in the Register of Companies as maintained by Registrar of Companies. The name of the company is therefore ordered to be restored and

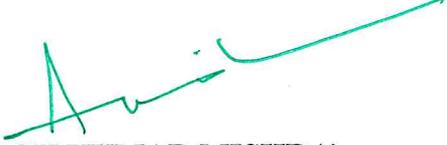
THIS TRIBUNAL DO FURTHER ORDER

The Petitioner Company shall within thirty days of the date of the receipt of this order cause a certified copy of this Order along with the copies of Audited Balance Sheet and other Statutory filings for the period of default i.e. from 2013-14 to till 2015-2016 and the subsequent year in prescribed format as required under the Companies Act, 2013 be filed with the Registrar of Companies.

The Petitioner Company is directed to pay Rs.75,000/- as cost to the account of Central Government in favour of the Pay & Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai and D.D. drawn to be handed over to Registrar of Companies, Karnataka Bangalore.

The Registrar of Companies, Karnataka is further directed to restore the name of the Petitioner company i.e. ACOUSTICAL SURFACES PRIVATE LIMITED in the Registrar of

Companies within a period of 30 days from the date of this order, after charging necessary fee as may be applicable and also to accept Balance Sheet and other Statutory Returns after charging additional fee as required under the Companies Act, 2013.



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL



(RATAKONDA MURALI)
MEMBER, JUDICIAL